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**DECISION MEMO**  
***Lyons Waterline Special Use Permit Renewal***  
**USDA Forest Service, Northern Region**  
**Nez Perce – Clearwater National Forests**  
**Lochsa Ranger District**  
**Idaho County, Idaho**

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**I. Decision**

I have decided to authorize the renewal of the special use permit of Lawrence L. Lyons (hereinafter referred to as "Lyons") to allow him to continue to operate his existing waterline. The legal coordinates for the waterline are T33N, R6E, Section 32, SE $\frac{1}{4}$  SW $\frac{1}{4}$  (Boise Meridian).

**Background**

Lyons' waterline renewal request is to continue use of the existing waterline for domestic water supply. The water source for this line is not in a running "creek" or "stream" but appears to be more of a collection point in a swale on Forest Service lands, just off the northwest corner of the Lyons' property.

Lyons has had the permit for water use from this location since 1982, as well as license 81-07112 for water rights since 1983.

The permit covers approximately .02 acres, described as a strip of land 300 feet in length and 2 feet wide, connecting from his property to a 10' x 10' parcel of land where he has a covered subsurface, 30 gallon collection "tank" (upright section of culvert).

The waterline associated with this permit is buried in the ground and runs from the culvert on Forest Service land to another catchment tank on private property. Additional runoff valves are located at that catchment tank so overflow in the waterlines can be diverted to a catchment pond on private land, eventually feeding back into a small open stream that crosses under the Smith Creek Road and back to Forest Service lands.

The permit renewal will authorize use of existing facilities and will be valid for a 10 year period from the date of issuance.

**Implementation and Design Specifications**

There will be no ground disturbance for the proposed permit renewal. Lyons' waterline is buried with surface access to the tanks and valves. There are no proposed changes to the existing waterline or spring box.

There are no changes to site access and no other agencies need to be contacted.

## **Rationale for Decision and Reasons for Categorically Excluding the Decision**

### **A. Category of Exclusion and Rationale for Using the Category**

Based on information in this document and the project record, I have determined this project is not significant in either context or intensity (40 CFR 1508.27), that no extraordinary circumstances affecting resource conditions exist (36 CFR 220.6), that this project may be categorically excluded from documentation in an EA or EIS, and that it meets all the criteria outlined for 36 CFR 220.6(e)(3)(vi) *Approval, modification, or continuation of minor special uses of National Forest Service lands that require less than five contiguous acres of land.*

The rationale for my decision is based on: 1) the proposed action fully meeting the criteria for Categorical Exclusions, 2) the proposed action meeting the purpose and need, 3) the findings related to extraordinary circumstances, discussed below, 4) the project's consistency with laws and regulations, including the Forest Plan, 5) the on-the-ground review and discussion with resource specialists, and 6) my review of the Biological Assessments (BA), Biological Evaluations (BE), and specialists' reports.

### **B. Finding of the Absence of Adverse Effects to Extraordinary Circumstances**

#### **1. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species:**

The Interdisciplinary Team (ID Team) Botanist, Wildlife and Fisheries Biologists determined the proposed actions will have no direct or indirect effect or impact on listed or sensitive plant, wildlife or fish species or habitat, and suitable habitat will not be altered because habitat is not present in the project area, habitat is present but the species do not occur in the project area or habitat is present and the species may occur, but the project will not affect the habitat for the species, and therefore no incremental effects exist that will cause a cumulative effect, as documented in the Biological Assessments and Evaluations, and specialists' reports (see plant, wildlife, and fish sections of the project record). Both the Forest Fish Biologist and Botanist had the following comments:

**Fisheries:** *This project involves re-issuance of a special use permit for applicant to continue to use water from a spring in Little Smith Creek drainage. The spring is not connected to any stream. Therefore, effects from withdrawing water will not be expected to affect streamflow where steelhead, cutthroat, or redband trout will be present. The project will affect streamflow in the Middle Fork Clearwater River.*

**Plants:** *The renewal of the permit for this existing use will have no effects on any plant species of concern.*

#### **2. Floodplains, wetlands, or municipal watersheds:**

##### **The Forest Hydrologist has determined:**

Floodplains: *The Project will not modify or occupy floodplains to an extent greater than already exists. As such, there will be no adverse impacts to floodplains; thereby complying with EO 11988 and FSH 1909.15, Chapter 30.3.2.*

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Wetlands: The Project does not propose to modify, occupy, or destroy wetlands. As such, the Project will not adversely affect wetlands; thereby complying with EO 11990 and FSH 1909.15, Chapter 30.3.2.

Municipal Watersheds: The Project area is not located within a municipal watershed. As such, the Project will not adversely affect municipal watersheds; thereby complying with FSH 1909.15, Chapter 30.3.2.

The project proposes no ground disturbing activities. The project only proposes an administrative change to an existing special use permit; i.e., a new permit holder of the same permit for a long-term existing waterline with a perfected state water right.

### **3. Congressionally designated areas, such as wilderness, wilderness study areas or national recreation areas:**

The project area is located within .5 miles of the Middle Fork of the Clearwater River but no direct, indirect or incremental effects have been found which will cause cumulatively significant effects to these areas.

### **4. Inventoried Roadless areas or potential wilderness areas:**

The project is not located within any Clearwater Forest Plan Roadless Areas, Idaho Roadless Areas (36 CFR 294 (c)) or potential wilderness areas, and therefore, no direct or indirect effects or incremental effects that will cause a cumulatively significant effect to these areas are anticipated.

### **5. Research Natural Areas:**

The project area does not include land designated as a Research Natural Area, and therefore, no direct or indirect effects, or incremental effects that will cause a cumulatively significant effect to these areas are anticipated.

### **6. American Indians and Alaska native religious or cultural sites and**

### **7. Archaeological sites, or historical properties or areas:**

**The Forest Archaeologist has determined:**

*Per 36 CFR 800.3(a)(1) the above named project has no potential to cause effects on historic properties, assuming such properties were present. Therefore, the Forest Service has no further legal obligation concerning National Historic Preservation Act compliance.*

### **8. Soils:** The project proposed no new ground disturbance.

## **II. Interested and Affected Agencies, Organizations, and Persons Contacted**

On August 16, 2013, letters providing information and seeking public comment were mailed to individuals, organizations, a variety of state and local agencies, and the Nez Perce and Coeur d'Alene tribes. During the public comment period, three letters were received regarding the permit but none had specific comments regarding the permit renewal. These letters are contained in the project record.

## **III. Findings Required by Other Laws**

Based on my review of the actions associated with this project, I find that the Starnes Waterline Special Use Permit Renewal and Permit Consolidation Request is consistent with applicable Federal laws and regulations.

**National Forest Management Act and Clearwater National Forest Plan:** This action is consistent with the 1987 Clearwater National Forest Plan (USDA Forest Service 1987), as amended, as required by the National Forest Management Act of 1976 (see project record for further information) because it follows the standards and guidelines contained in those plans. In addition, the decision considers the best available science [36 CFR 219.35(a) (Reinstatement of the 2000 Planning Rule; 74 FR 242)].

**Forest Plan Amendment 20 - PACFISH Riparian Habitat Conservation Areas (RHCAs):** All activities associated with the proposed action comply with direction regarding PACFISH because no effects to wildlife or fish species or habitat are anticipated, and no soil disturbance will occur.

**Endangered Species Act:** A Forest Service Fish Biologist, Wildlife Biologist, and Botanist evaluated the proposed action with regard to the Endangered Species Act as documented in the Biological Assessments, Biological Evaluations, and specialists' reports, and determined the subject Modification project is consistent with the Endangered Species Act because no effects to threatened and endangered species are anticipated.

**Clean Air Act:** This project will comply with the provisions of the Clean Air Act, and the rules, regulations, and permit procedures of the Environmental Protection Agency (EPA) and the Idaho Department of Environmental Quality (IDEQ) because no effects to air quality are anticipated and no prescribed burning is planned.

**Clean Water Act and State Water Quality Laws:** The Interdisciplinary Team Hydrologist has determined that this project complies with the Clean Water Act, and state and Federal water quality laws because this proposal will have no significant effects to the water quality of area or downstream waters.

**National Historic Preservation Act:** Because of the type of project and its location, the Forest Cultural Resource Specialist has determined that this project has no potential to cause effects on historic properties, assuming such properties were present. Therefore, the Forest Service has no further legal obligation concerning National Historic Preservation Act compliance. (A copy of this analysis is located in the project record.) Therefore, this project meets the Agency's responsibilities under the National Historic Preservation Act (16 USC 470), as amended, and is consistent with the *Programmatic Agreement between the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation and the Region 1 National Forests in Northern Idaho Regarding the Management of Cultural Resources*.

**Migratory Bird Treaty Act:** No substantial losses of migratory bird habitat are expected from the implementation of this proposal, nor any measurable impact on neotropical migratory bird populations as a whole, therefore, the proposed action will comply with the Migratory Bird Treaty Act.

The project complies with the U.S. Fish and Wildlife Service Director's Order #131 related to the applicability of the Migratory Bird Treaty Act to Federal agencies and requirements for permits for "take." In addition, this project complies with Executive Order 13186 because the analysis meets agency obligations as defined under the January 16, 2001 Memorandum of Understanding between the Forest Service and U.S. Fish and Wildlife Service designed to complement Executive Order 13186.

**American Indian Treaty Rights:** The Nez Perce Tribal Government Liaison and the Nez Perce Tribe reviewed the subject special use permit modification, and determined the proposed action will not affect Nez Perce Tribe Treaty rights or Nez Perce Tribal members' abilities to exercise those rights.

**Environmental Justice:** The proposed action will not disproportionately impact consumers, Native American Indians, women, low-income populations, other minorities, or civil rights of any American Citizen in accordance with Executive Order 12898. No disproportionate impacts to minority or low-income populations were identified during scoping or the effects analysis.

**Prime Farm Land, Range Land, and Forest Land:** The proposed action complies with the Federal Regulations for prime land. The definition of "prime" forest land does not apply to lands within the National Forest System. The project area does not contain any prime range land or farm land. Federal lands will be managed with appropriate sensitivity to the effects on adjacent lands.

**Energy Requirements:** No unusual energy demands are required to implement the proposed action.

**Other Laws or Requirements:** The proposed action is consistent with all other Federal, state or local laws or requirements for the protection of the environment and cultural resources.

#### IV. Administrative Review and Appeal Opportunities, and Implementation Date

Pursuant to 36 CFR 214.4(c), this decision is subject to appeal by the holder, operator or applicant directly affected by the decision.

#### V. Contact Person

Questions regarding this decision should be sent to Linda S. Helm, c/o Nez Perce National Forest Supervisor's Office, 104 Airport Road, Grangeville, Idaho 83530; by telephone at (208) 935-4285; or facsimile transmittal at (208) 983-4042 during business hours (M-F, excluding Federal Holidays, 7:30 a.m. to 4:30 p.m. PST).

#### VI. Signature of Deciding Officer

  
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RICK BRAZELL  
Forest Supervisor

3-25-14  
\_\_\_\_\_  
Date Executed

Enclosures: Map of Waterline Site

cc: Teresa Trulock, Molly Pulcherz

## Map of Waterline Site

